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ABSTRACT

One of a series of secondary level teaching units presenting case studies with pro and con analyses of particular legal problems, the document presents a student's lesson plan, a teacher's lesson plan, a lawyer's lesson plan on religious rights in the public schools. Lessons acquaint students with important First Amendment rights concerning religion as well as the unanswered issue of what limitations are placed upon the religious rights of school teachers. Although similar in content, the student and teacher lesson plans are presented separately to facilitate individual or small group work by students and to provide the teachers with additional background information. Prior to a lawyer's visit to the classroom, students view and discuss a film entitled "Freedom of Religion," consider issues raised by hypothetical cases, and role play a case concerning prayer in public schools brought before the U.S. District Court in Massachusetts ("Gaines versus Anderson"). Teacher materials contain additional case information, reading on court systems, and a simplified view of federal and California court structures. The lawyer's lesson plan provides further questions and discussion concerning case studies, resolution of dispute, and other court cases pertaining to this area of law. (LH)

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DO YOU BELIEVE?

Religious Rights in the Public Schools

A Student's Lesson Plan

Prepared by Estelle Howard
Richard Weintraub
1977

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SP 016 041

DO YOU BELIEVE?
(Religious Rights in the Public Schools)

STUDENT'S LESSON PLAN

INTRODUCTORY UNIT #1

After you have viewed the film, Freedom of Religion, discuss the questions below:

QUESTIONS

A. What do you think the phrase "Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof;..." (First Amendment to the Constitution) means?

B. Do you believe the freedom of religion clause provides that an individual can perform whatever religious rites** he believes in? no matter what the consequences to society? If you do, why? If not, why not?

C. If the society as a whole has certain rules that it follows, do you think that these rules should be flexible enough to permit minority groups to practice their religions without interference? What if those rites infringe on the religious freedom of others? What if they are offensive to the morals of the majority?

D. In a case such as presented in the film, do you believe that an individual has the right to make a decision relative to his/her living or dying because of religious convictions? Why? Why not? If you agree, do you think this right should carry over to deciding the fate of the unborn child? Why? Why not? If your convictions were the same as the couple in the film, how would you answer?

** religious rites: the manner or form by which a church ceremony is performed.

E. What examples does Mr. Minor use in arguing that, under the law, there is a difference between belief and action? What relevance does each have to the case?

F. Two court decisions are quoted by the attorneys:

"Laws are made for the government of action, and while they cannot interfere with mere religious belief and opinion, they may with practices."

"In a mass society which presses at every point towards conformity, the protection of a self-expression, however unique, of the individual and the group, becomes evermore important."

1. What is the basic issue of each of these court decisions? What relevance does each have to the Coleman case?

2. Why do the attorneys refer to other cases involving freedom of religion instead of to the Constitution itself?

G. Review Judge Jones' closing statement. What are the elements that he must consider to make a fair decision? Discuss arguments on both sides. What do you think the decision should be? Should Mrs. Coleman be compelled to receive the transfusion?

INTRODUCTORY UNIT #2

Read the following hypothetical case. Consider carefully the issues raised by the case and discuss the questions with the class.

THE CASE

A large campaign poster reading: "A Vote For Dan Is A Vote For Jesus" was hung by Dan Miller, a candidate for student body president, on the wall alongside the school cafeteria.

A parent, visiting on the campus, saw the sign, and complained to the principal that the poster was sacriligious. The principal ordered that the poster be removed at once, and the poster was torn off the wall by the Vice-Principal.

The Student Council protested the action by the principal. They pointed out that Dan had met all the qualifications needed to run for office, and had complied with all the election rules. The poster was hung in an approved place and the paper used was the fireproof paper required by the school. The students complained that tearing down the poster was a violation of Dan's rights as guaranteed under the First, Fourth and Fourteenth Amendments.

QUESTIONS

A. Have Dan's rights to "freedom of religion" and "freedom of expression" been trespassed upon by the action of the principal? Why? Why not?

B. Do you think that Dan's poster violates the doctrine of separation of church and state? Does it violate the freedom of others to believe what they want to believe? Does it in any way force another person to change his/her beliefs?

C. Do you think that the wording of the poster might cause violence of any kind on the school grounds? Would you have the same opinions if you were the principal?

D. Was Dan's right to compete for support from the student body violated by the principal's action? Why? Why not?

LAWYER-IN-THE-CLASSROOM UNIT

Read the following case which the lawyer will analyze and discuss with the class. Study the questions listed below so that you can enter into discussion with the lawyer, ask questions about facts and procedure, and express your opinion on the issues raised by the case.

THE CASE

Stan Jones is an eleventh grade English teacher in a public high school who has begun to wear a large wooden cross to work each day. Stan also carries a pocket-size Bible which he quietly reads at free moments during the day either in the presence or outside the presence of the public high school students. On Thursday of last week, Stan invited several of his fellow teachers and students in each of his classes to a meeting for all of those interested in discussing or participating in a religious movement. The meeting would be held after school on the following Monday. Stan indicated that everyone would gather either in his classroom or at a nearby coffeehouse. The next day when Stan came to school, in each of his classes he distributed pamphlets supporting such a religious movement to his students. On the following Monday, a meeting attended by fellow teachers and five of Stan's students was held in the school classroom. On Friday of that week, the principal of the high school called Stan into a meeting with the school superintendent and warned him that no meetings with students participating could be held and that Stan could distribute no further literature.

QUESTIONS

A. Do you believe that a public school teacher has a right to meet with other teachers and/or students and discuss religion? Why? Why not?

B. Does the location of the meeting affect the teacher's rights? Why?

C. Do public school teachers have the right to distribute religious literature on the school campus or in the classroom?

D. If the teacher is restricted by law in the extent to which he/she can discuss religion in the classroom, why is this restriction important to parents, students, school administrators, and state lawmakers?

E. What arguments would you use to support your position if you were Stan? the principal? the parents of the students who attended the meeting?

F. Do you believe that the issues would be different if Stan met with teachers only? Why?

G. Would your reelings in such a matter be different if the teacher were someone you liked? someone you disliked?

H. How would you resolve the issue of Stan's rights as against the rights cf society?

FOLLOW-UP UNIT

To explore further the "Establishment Clause" of the First Amendment and the questions of what constitutes government support of religion, the class will have an opportunity to role play a case concerning prayer in public schools brought before the U.S. District Court in Massachusetts.

The students assigned to play the roles of the attorneys for the plaintiffs and for the defendants will be given an opportunity to reasearch the decisions the Supreme Court has made on the constitutionality of religious exercises in public schools, to discuss their strategy for presentation of their arguments, and to prepare their case. Several landmark cases in this area are listed to guide the attorneys in their research, as well as other sources of information on religious freedom.

CASE

"A MOMENT FOR MEDITATION"
(Gaines v. Anderson, 421 F. Supp 337 (D.C. Mass. 1976))

Jonathan Meadows, a junior in the Framingham, Mass. high school, was disturbed when his teacher announced to the class that at the start of each day the class would be silent for one minute for the purpose of meditation or prayer.

He and several other students talked about the 'prayer meeting' and expressed feelings that the school had no right to require that they pray or meditate every morning, even for only a minute.

The parents of these students also objected to the new state statute which reads, "At the commencement of the first class of each day in all grades in all public schools the teacher in charge of the room in which each such class is held shall announce that a period of silence not to exceed one minute in duration shall be observed for meditation or prayer, and during any such period silence shall be maintained and no activities engaged in. St. 1966, ch. 130, as amended by St. 1973, ch. 621; Mass. Gen. Laws ch. 71 & 1A.

Challenging the constitutionality of the statute, the American Civil Liberties Union filed a complaint on behalf of twelve students and their parents with the U.S. District Court in Massachusetts. In their complaint the plaintiffs alleged that the statute and the guidelines adopted by the Framingham

School Board to implement this statute (1) established a religious exercise in the public schools in violation of the Establishment Clause of the First Amendment; (2) mandated a particular format for the religious exercise in violation of the Free Exercise Clause of the First Amendment, and (3) interfered with the parents' due process rights exclusively to supervise the religious upbringing of their children in violation of the Fourteenth Amendment.

INSTRUCTIONS FOR PLAY

ISSUE

Whether Statute 71A of the Massachusetts Code requiring students to be silent for one minute each day for the purpose of meditation or prayer is an abridgment of the Establishment Clause of the First Amendment.

> The statute reads: At the commencement of the first class of each day in all grades in all public schools the teacher in charge of the room in which each such class is held shall announce that a period of silence not to exceed one minute in duration shall be observed for meditation or prayer, and during any such period silence shall be maintained and no activities engaged in. (St. 1966, ch. 130, as amended by St. 1973, ch. 621; Mass. Gen. Laws ch. 71 & 1A)

The class will be divided into three groups:

1. Attorneys for the plaintiffs (students and parents)

2. Attorneys for the defendants (superintendent of schools and school board)

   Each lawyer-team will be made up of five to seven students

3. U.S. District Court. The Court will be a panel of three judges (or the class, as is determined by the teacher).

   The students who play the attorneys will be selected several days before the trial.

   Each team will choose a senior attorney, who will guide the research, preparation and presentation of the case.

   The team should discuss the issue and decide what kind of information and facts they will need to support the premise upon which they will base their case. The senior attorney can assign particular research jobs to each member of the team. The team will prepare its case and present its arguments before the Court.

THE TRIAL

Each team will have 20 minutes to argue its case before the court. After the arguments, each team will be allowed 5 minutes for rebuttal.

The judges will keep careful notes on the proceedings. After the arguments, each judge will give his decision as to the constitutionality of the statute, and the reasons for his/her decision.

REFERENCES

Landmark cases for reference:*

Engel v. Vitale, 370 U.S. 421 82 S.Ct. 1261 (1962)

Minersville School District v. Gobitis, 310 U.S. 586, 60 S. Ct. 1010 (1940)

West Virginia State Board of Education v. Barnette, 319 U.S. 624, 63 S.Ct. 1178 (1943)

School District of Abington Township v. Schempp 374 U.S. 203, 83 S.Ct. 1560 (1963)

Suggested reading:

Liberty Under Law, "Students Who Wouldn't Salute", American Education Publications. 1963, 1967 pgs. 15-18

Religious Freedom, American Education Publications, 1967

Religious Issues in American Culture, Spivay, Ganstad, Allen; Addison-Wesley Publishing Co., 1972

The Bill of Rights: A Source Book, revised edition, Cohen, Sobul; Benziger Bruce & Glencoe Inc. 1975

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* "How To Use A Law Library", a pamphlet prepared by the Constitutional Rights Foundation would be useful to the 'lawyers' in researching their case. It may be obtained from CRF, 1510 Cotner Avenue, Los Angeles, California 90025 - Cost - 75¢.

DO YOU BELIEVE?

Religious Rights in the Public Schools

A Teacher's Lesson Plan

Prepared by Estelle Howard
Richard Weintraub
1977

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DO YOU BELIEVE ?
(Religious Rights in the Public Schools)

TEACHER'S LESSON PLAN

INTRODUCTORY UNIT #1

It is suggested that prior to the lawyer's visit, the film, Freedom of Religion* (available from the Constitional Rights Foundation, the L.A. City Schools and County Schools AV Libraries) to be shown to the class.

Copy the questions listed below and distribute to the class. Have the students discuss the questions after viewing the film.

QUESTIONS

A. What do you think the phrase "Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof;..." (First Amendment to the Constitution) means?

B. Do you believe the freedom of religion clause provides that an individual can perform whatever religious rites** he believes in? no matter what the consequences to society? If you do, why? If not, why not?

C. If the society as a whole has certain rules that it follows, do you think that these rules should be flexible enough to permit minority groups to practice their religions without interference? What if those rites infringe on the religious freedom of others? What if they are offensive to the morals of the majority?

D. In a case such as presented in the film, do you believe that an individual has the right to make a decision relative to his/her living or dying because of religious convictions? Why? Why not? If you agree, do you think this right should carry over to deciding the fate of the unborn child? Why? Why not? If your convictions were the same as the couple in the film, how would you answer?

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* The Bill of Rights in Action: Freedom of Religion; Produced by B. Fass. Available from Bailey Film Associates, 11559 Santa Monica Blvd., Los Angeles, California 90025.

** religious rites: the manner or form by which a church ceremony is performed.

E. What examples does Mr. Minor use in arguing that, under the law, there is a difference between belief and action? What relevance does each have to the case?

F. Two court decisions are quoted by the attorneys:

"Laws are made for the government of action, and while they cannot interfere with mere religious belief and opinion, they may with practices."

"In a mass society which presses at every point towards conformity, the protection of a self-expression, however unique, of the individual and the group, becomes evermore important."

1. What is the basic issue of each of these court decisions? What relevance does each have to the Coleman case?

2. Why do the attorneys refer to other cases involving freedom of religion instead of to the Constitution itself?

G. Review Judge Jones' closing statement. What are the elements that he must consider to make a fair decision? Discuss arguments on both sides. What do you think the decision should be? Should Mrs. Coleman be compelled to receive the transfusion?

INTRODUCTION UNIT #2

As an alternate lesson, an open-ended discussion on the following hypothetical case will allow the students to examine some of the questions concerning religious rights in the schools, as well as their attitudes and prejudices regarding religious freedoms.

Copy and distribute the materials from Introductory Unit II of the Student's Plan. Use the questions as a springboard to general discussion.

THE CASE

A large campaign poster reading: "A Vote For Dan Is A Vote For Jesus" was hung by Dan Miller, a candidate for student body president, on the wall alongside the school cafeteria.

A parent, visiting on the campus, saw the sign, and complained to the principal that the poster was sacriligious. The principal ordered that the poster be removed at once, and the poster was torn off the wall by the Vice-Principal.*

The Student Council protested the action by the principal. They pointed out that Dan had met all the qualifications needed to run for office, and had complied with all the election rules. The poster was hung in an approved place and the paper used was the fireproof paper required by the school. The students complained that tearing down the poster was a violation of Dan's rights as guaranteed under the First, Fourth and Fourteenth Amendments.

QUESTIONS

A. Have Dan's rights to "freedom of religion" and "freedom of expression" been trespassed upon by the action of the principal? Why? Why not?

B. Do you think that Dan's poster violates the doctrine of separation of church and state? Does it violate the freedom of others to believe what they want to believe? Does it in any way force another person to change his/her beliefs?

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* Caution to teacher: The issue to be discussed here is religious rights, not the question of the poster being "torn off the wall . . . .' The teacher should be aware that the students might make this the issue for discussion rather than the questions of violation of the First Amendment Rights.

DO YOU BELIEVE?

C. Do you think that the wording of the poster might cause violence of any kind on the school grounds? Would you have the same opinions if you were the principal?

D. Was Dan's right to compete for support from the student body violated by the principal's action? Why? Why not?

LAWYER-IN-THE-CLASSROOM UNIT

Copy and distribute the Day Two materials in the Student's Plan to the class. This should include the case to be discussed and the questions.

THE CASE

Stan Jones is an eleventh grade English teacher in a public high school who has begun to wear a large wooden cross to work each day. Stan also carries a pocket-size Bible which he quietly reads at free moments during the day either in the presence or outside the presence of the public high school students. On Thursday of last week, Stan invited several of his fellow teachers and students in each of his classes to a meeting for all of those interested in discussing or participating in a religious movement. The meeting would be held after school on the following Monday. Stan indicated that everyone would gather either in his classroom or at a nearby coffeehouse. The next day when Stan came to school, in each of his classes he distributed pamphlets supporting such religious movement to his students. On the following Monday, a meeting attended by fellow teachers and five of Stan's students was held in the school classroom. On Friday of that week, the principal of the high school called Stan into a meeting with the school superintendent and warned him that no meetings with students participating could be held and that Stan could distribute no further literature.

QUESTIONS

A. Do you believe that a public school teacher has a right to meet with other teachers and/or students and discuss religion? Why? Why not?

B. Does the location of the meeting affect the teacher's rights? Why?

C. Do public school teachers have the right to distribute religious literature on the school campus or in the classroom?

D. If the teacher is restricted by law in the extent to which he/she can discuss religion in the classroom, why is this restriction important to parents, students, school administrators, and state lawmakers?

E. What arguments would you use to support your position if you were Stan? the principal? the parents of the students who attended the meeting?

F. Do you believe that the issues would be different if Stan met with teachers only? Why?

G. Would your feelings in such a matter be different if the teacher were someone you liked? someone you disliked?

H. How would you resolve the issue of Stan's rights as against the rights of society?

FOLLOW-UP UNIT

The activity to follow the discussion with the lawyer will allow a group of students to research and prepare arguments for presentation before a U.S. District Court on a case involving prayer and meditation in the schools. The students will have an opportunity to analyze the implications of the Establishment Clause in the First Amendment and the question of the constitutionality of state required prayer in public institutions.

It is suggested that the teacher assign the roles several days before the classroom presentation so that the lawyer teams will have an opportunity to research the issue, discuss strategy and prepare arguments for the presentation to the class.

Several landmark cases and other sources of information on this issue of religious freedom are listed at the end of this plan to assist the students in their research.

CASE

"A MOMENT FOR MEDITATION"
(Gaines v. Anderson, 421 F. Supp 337 (D.C. Mass. 1976))

Jonathan Meadows, a junior in the Framingham, Mass. high school, was disturbed when his teacher announced to the class that at the start of each day the class would be silent for one minute for the purpose of meditation or prayer.

He and several other students talked about the 'prayer meeting' and expressed feelings that the school had no right to require that they pray or meditate every morning, even for only a minute.

The parents of these students also objected to the new state statute which reads, "At the commencement of the first class of each day in all grades in all public schools the teacher in charge of the room in which each such class is held shall announce that a period of silence not to exceed one minute in duration shall be observed for meditation or prayer, and during any such period silence shall be maintained and no activities engaged in. St. 1966, ch. 130, as amended by St. 1973, ch. 621; Mass. Gen. Laws ch. 71 & 1A.

Challenging the constitutionality of the statute, the American Civil Liberties Union filed a complaint on behalf of twelve students and their parents with the U.S. District Court in Massachusetts. In their complaint the plaintiffs alleged that the statute and the guidelines* adopted by the Framingham

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* See bottom of next page for footnote.

School Board to implement this statute (1) established a religious exercise in the public schools in violation of the Establishment Clause of the First Amendment; (2) mandated a particular format for the religious exercise in violation of the Free Exercise Clause of the First Amendment, and (3) interfered with the parents' due process rights exclusively to supervise the religious upbringing of their children in violation of the Fourteenth Amendment.

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* Guidelines for Implementation of Chapter 71, Section 1A of the Massachusetts General Laws:

(1) The following announcement shall be made each school day morning in each school at the commencement of the first class (it being understood that in the high schools the home room period would be considered the first regular period of the day) by the teacher in charge of the room. The announcement shall be made during the period of time when school attendance is taken.

"A one minute period of silence for the purpose of meditation or prayer shall now be observed. During this period silence shall be maintained and no activities engaged in." At the end of the one minute period, the following shall be announced by the teacher. "Thank you."

(2) If teachers are asked questions concerning this period for meditation or prayer the following shall be the response.

"We are doing this in compliance with State Law. Any other questions you have should be discussed with your parents or with someone in your home."

INSTRUCTIONS FOR PLAY

ISSUE

Whether Statute 71A of the Massachusetts Code requiring students to be silent for one minute each day for the purpose of meditation or prayer is an abridgment of the Establishment Clause of the First Amendment.

> The statute reads: At the commencement of the first class of each day in all grades in all public schools the teacher in charge of the room in which each such class is held shall announce that a period of silence not to exceed one minute in duration shall be observed for meditation or prayer, and during any such period silence shall be maintained and no activities engaged in. (St. 1966, ch. 130, as amended by St. 1973, ch. 621; Mass. Gen. Laws ch. 71 & 1A)

Divide the class into three groups:

1. Attorneys for the plaintiffs (representing students and parents) 5-7 students

2. Attorneys for the defendants (representing superintendents of schools and school board) 5-7 students

3. U.S. District Court

   A panel of 3 judges (or the entire class, as determined by the teacher)

ROLES

Lawyer-Teams - Select those students who will role play the attorneys for the plaintiff and the attorneys for the defendant several days before the simulation proceedings.

Each team will choose a senior attorney to guide the research, preparation and presentation.

Advise the team members to analyze the issue, and determine the premise upon which they will base their case. The senior member of the team should be responsible for assigning research problems to the other members. Suggest to the teams that after the research is done, and study has determined the arguments in support of its position, an outline should be prepared with citations and references, where possible, for the verbal arguments before the Court.

Judges - Select 3 students to be the U.S. District Judges (or have the class be the court and render a decision by hand-vote).

Each judge should keep careful notes of the proceedings. After the arguments, each judge will give his decision as to the constitutionality of the statute and the reasons he/she has reached such decision. (If the class is the court, hold a short discussion on the reasons for both the affirmative and dissenting opinions.)

THE TRIAL

The court will convene in the classroom, with the three judges panel in the front of the room. The attorney teams will be located in front of the classroom: plaintiff team at a table on one side of the room; defendant team at a table at the other side of the room.

The senior attorney for each team will present the arguments for (1) the plaintiffs and (2) the defendants. (Each team may decide that members of the team will present different points in their arguments.)

Each team will have 15 minutes to argue its case before the court. After the arguments, each team will be allowed 5 minutes for rebuttal. (The teams should be given time to discuss the points the other team has made and how to argue against them.)

After the closing statements, the judges will consider the arguments and present their decisions. If the class has acted as the court, the affirming and dissenting opinions can be decided by a show of hands. Class discussion of the reasoning for such decisions should follow.

INFORMATION FOR THE TEACHER

In Gaines v. Anderson the United States District Court ruled that:

> A state statute which mandates a moment of silence in a public school setting is not per se an invalid exercise of legislative power. All that the statute requires students to do is be silent. Silence during the school day may frequently be necessary if schools are to attain their education goals, and may serve legitimate secular purposes in aid of the educative function.
>
> The word "meditation" did not infuse the statute with the unconstitutional purpose of advancing or inhibiting religion. Meditation - the act of meditating - is not necessarily a religious exercise. Used in its ordinary sense "meditation" connotes serious reflection or contemplation on a subject which may be religious, irreligious or nonreligious. Thus, the words of the 1966 statute are capable of a reasonable construction by which the constitutional difficulties raised by plaintiffs may be avoided. We think it is entirely consistent with the secular goals of public schools for the state to encourage students to turn their minds silently toward serious thoughts and values.
>
> On the question of whether the statute violated the restrictions of the Establishment Clause after the words "or prayer" were added to it by the 1973 amendment, the Court held the word "prayer" in its usual and ordinary sense has a specifically religious meaning and that if the amendment had the purpose or primary effect of encouraging religious activity or prayer, the statute would be rendered unconstitutional. However, as the statute as amended permits medication or prayer without mandating the one or the other, the effect of the amended statute is to accommodate students who desire to use the minute of silence for prayer or religious meditation, and also other students who prefer to reflect upon secular matters.
>
> The court further stated that the parent-plaintiffs' contention that the statute and guidelines violate their rights under the Due Process Clause of the Fourteenth Amendment exclusively to direct the religious bringing up of their children reflects exactly the free exercise argument advanced on behalf of the students. Compulsion by law of the acceptance of any creed or religious belief or the participation

in any form of religious exercise is forbidden by the First Amendment. But the statute and guidelines do not compel the students to affirm a religious belief repugnant to their parents; they do not compel student assent or even resignation to a religious practice repugnant to their parents. The parents remain free to instruct their children that, while other students who desire may pray silently, they should not engage in prayer during the moment of silence but merely remain silent as directed by the teacher. The court held that because the statute and guidelines compel no participation in any religious exercise by the students to free exercise of religion; and that the statute did not prohibit or inhibit parental right to guide and instruct children in regard to religion.

REFERENCES

Landmark cases for reference:*

Engel v. Vitale, 370 U.S. 421 82 S.Ct. 1261 (1962)

Minersville School District v. Gobitis, 310 U.S. 586, 60 S. Ct. 1010 (1940)

West Virginia State Board of Education v. Barnette, 319 U.S. 624, 63 S.Ct. 1178 (1943)

School District of Abington Township v. Schempp 374 U.S. 203, 83 S.Ct. 1560 (1963)

Suggested reading:

Liberty Under Law, "Students Who Wouldn't Salute", American Education Publications. 1963, 1967 pgs. 15-18

Religious Freedom, American Education Publications, 1967

Religious Issues in American Culture, Spivay, Ganstad, Allen; Addison-Wesley Publishing Co., 1972

The Bill of Rights: A Source Book, revised edition, Cohen, Sobul; Benziger Bruce & Glencoe Inc. 1975

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* "How To Use A Law Library", a pamphlet prepared by the Constitutional Rights Foundation would be useful to the 'lawyers' in researching their case. It may be obtained from CRF, 6310 San Vicente Blvd., Suite 402, Los Angeles, California 90048 - Cost - 75¢.

COURT SYSTEMS

There are essentially three ways to categorize our courts. First, there are trial and appellate courts. The job of the trial courts is to find the facts in the case and apply the law to those specific facts. All cases start at the trial court level. The appellate courts focus on the law involved in the case. They do not review questions of fact, which the trial court decides. Appellate courts decide whether the trial judge erred in his interpretation of the law, and thus a case may reach an appellate court only after it has been heard in a trial court.

The second distinction is between criminal and civil courts. In a criminal case (where accused has harmed society and government, representing society, brings a case against him), the government accuses a person of violating a law for which a penalty is provided. It seeks to punish the accused by depriving him of his life, liberty, or property. In a civil case, one may also be deprived of his property (and sometimes his liberty), but for a different reason. The purpose of a criminal trial is to punish the offender; that of a civil trial (one person against another--between private citizens) is to compensate one person for a loss caused by another. Common cases where such liability may be found are automobile accidents, sale of faulty merchandise, and failure to pay rent.

Third, there are both state and federal court systems. (See Chart on Court Structures.) The federal district courts are the trial courts for all cases arising under the laws and Constitution of the United States. State courts have jurisdiction over all cases arising at common law* and equity** as well as all cases under the laws of the states as enacted by their legislatures. Most cases, both criminal and civil, are brought in the state courts. Within the state court system there may be a number of different trial and appellate courts having jurisdiction, or authority, over different types of cases and cases of different degrees of importance. For example, in California trial courts, a case in a large judicial district will be brought in either the municipal court or the superior court. The superior court handles the

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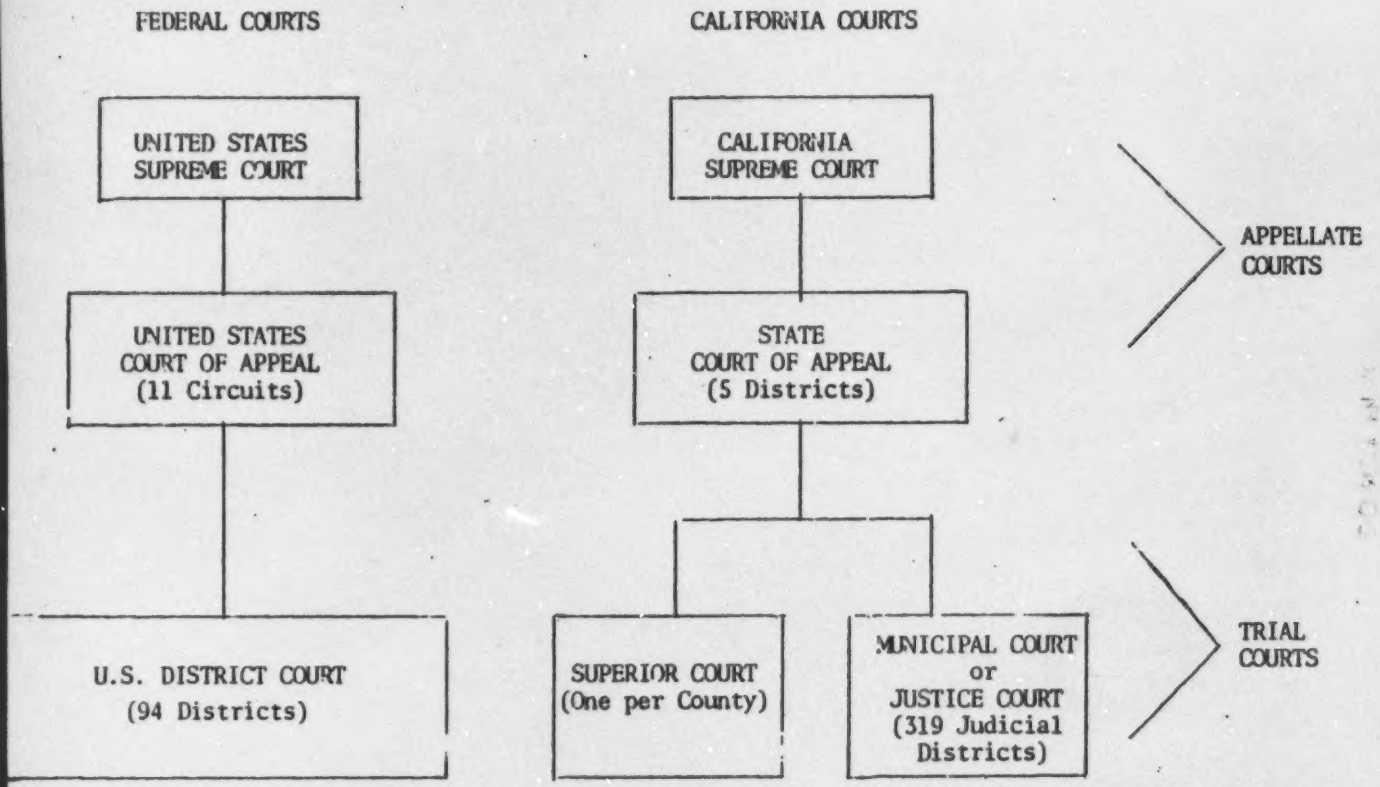
* Common law - Law that has its origins in England and grows from ever-changing custom and tradition. Judge-made law (as opposed to legislature-made law).

** Equity - A court's power to "do justice" where specific laws do not cover the situation.

more important cases--the felonies and civil cases involving over $5,000. But certain types of cases, such as divorce and probate, are brought only in superior court regardless of the amount in controversy. In the smaller judicial districts with a justice court instead of a municipal court, there is a similar division of the cases.

The federal court system has a similar structure. While there are a number of courts that handle only specialized matters, such as the customs court and tax court, most cases start in the federal district courts. Congress has strictly limited the types of cases that fall within the jurisdiction of these courts. One type is the diversity case where each party resides in a different state and the amount in controversy is over $10,000. The other type is a case involving a federal question, that is, one applying the federal constitution, statutes, or treaties.


FEDERAL COURTS
CALIFORNIA COURTS
UNITED STATES SUPREME COURT
CALIFORNIA SUPREME COURT
APPELLATE COURTS
UNITED STATES COURT OF APPEAL (11 Circuits)
STATE COURT OF APPEAL (5 Districts)
U.S. DISTRICT COURT (94 Districts)
SUPERIOR COURT (One per County)
MUNICIPAL COURT or JUSTICE COURT (319 Judicial Districts)
TRIAL COURTS

A SIMPLIFIED VIEW OF THE FEDERAL AND CALIFORNIA COURT STRUCTURES

"DO YOU BELIEVE?"

Religious Rights in the Public Schools

A Lawyer Lesson Plan
Prepared by Morton M. Rosenfeld, 1976

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DO YOU BELIEVE?
(Religious Rights in the Public Schools)

LAWYER'S LESSON PLAN

Area of Law: Constitutional Law

Specific Topic: DO YOU BELIEVE?
(Religious Rights in the Public Schools)

Objective: To acquaint students with important first amendment rights concerning religion as well as the unanswered issues of what limitations are placed upon the religious rights of school teachers.

THE CASE

Stan Jones is an eleventh grade English teacher in a public high school who has begun to wear a large wooden cross to work each day. Stan also carries a pocket-size Bible which he quietly reads at free moments during the day either in the presence or outside the presence of the public high school students. On Thursday of last week, Stan invited several of his fellow teachers and the students in each of his classes to a meeting for all of those interested in discussing or participating in a religious movement. The meeting would be held after school on the following Monday. Stan indicated that everyone would gather either in his classroom or at a nearby coffeehouse. The next day when Stan came to school, in each of his classes he distributed pamphlets supporting such a religious movement to his students. On the following Monday, a meeting attended by fellow teachers and five of Stan's students was held in the school classroom. On Friday of that week, the principal of the high school called Stan into a meeting with the school superintendent and warned him that no meeting with students participating could be held and that Stan could distribute no further literature.

QUESTIONS AND DISCUSSIONS

A. What are the major issues raised by the case?

Does a public school teacher have a constitutionally protected right to engage in behavior of his or her own individual choosing at school?

If so, is that right absolute? Do public school teachers have the right to meet with other teachers and/or students to discuss religion? If so, does the right extend to teachers meeting with teachers and/or students? Does the location of the meeting affect the teacher's right? Do public school teachers have the right to distribute religious literature on the school campus or in the school classroom?

B. Who has an interest in the above issues?

The extent to which public school teachers may exercise religious rights guaranteed by the Constitution is a question of significance to parents, students, educators (school administrators) and state legislators.

C. How are the interests of the above-mentioned persons protected by law?

The first amendment of the Constitution contains the two basic doctrines which define the right to religious expression: the establishment clause and the free exercise clause. (Additionally, two other portions of the first amendment, the freedoms of speech and association, play a role in determining what limitations have been or should be placed upon the religious rights of public school teachers. These first amendment rights are beyond the scope of this discussion which is designed to inform students about first amendment religious rights.) The United States Supreme Court has determined that three conditions must be satisfied for an establishment of religion by a state not to occur. A statute or regulation, whether enacted or administered by a state legislature or local school board (1) must have a secular legislative purpose, (2) must have a primary effect which neither advances nor inhibits religion, and (3) does not create an excessive entanglement between church and state.

The free exercise clause provides that an individual may hold any religious belief he or she wishes. The standard which has developed under the free exercise clause can be stated as follows: An individual cannot be required either to act contrary to his or her religion or to forego a benefit because of his or her religious beliefs

Since the free exercise clause and the establishment clause often directly conflict with each other, the Supreme Court has applied the theory of "accommodation", which treats the two clauses as independent substantive limitations on the actions of government. The accommodation theory recognizes that complete separation of church and state is impossible and concedes that in some cases, in order to retain neutrality, the government must aid religion so that it is not placed at a disadvantage. The present status of the theory of accommodation applied by the Supreme Court in the past is unclear; however a complete abandonment of the theory has not occurred. The Supreme Court continues to permit some aid to religion.

The religious activities of public school teachers demonstrate the conflict which exists between the two clauses. The public school teacher deserves some accommodation of his or her individual right to free exercise, but no religion may be established by a state instrumentality, the public school system.

D. What arguments would the various interested parties use to support their positions on the issues mentioned above? Which of the arguments seem more persuasive and why?

Stan Jones, the high school teacher in our hypothetical situation, would argue that he has the right to wear the clothing and jewelry of his choice as well as to carry a Bible and read the Bible during his working day on account of his free exercise rights and so long as the activities do not disrupt the school. If his students remain unaffected and no disruption occurs, he should be permitted to wear what he wants and to read what he wants. However, the school administrators and officials argue that Stan's actions would not go unperceived and disruption will occur. If Stan is praying or reading religious material silently within the view of his students, or if religious symbols such as the large wooden cross appear prominently in Stan's dress, a message is being communicated to the students. Since the students are a captive audience, some establishment of religion may be occurring. The public school is an arm of the state and Stan's activities must no longer occur, the school officials might contend.

Parents of the students in Stan's classes will argue that Stan's wearing of the cross and reading the Bible (as well as all of the other activities mentioned in our hypothetical situation) infringe upon the parents'

free exercise rights to direct their children's religious education and to raise their children in a chosen religion. Stan of course may argue in return to the contentions of parents and school authorities that the tenets of his own religion require that he read the Bible at various times during the day and wear a large wooden cross. If this is true, then Stan should be permitted to practice his religion freely.

The issues presented by whether or not Stan has the right to meet with teachers and/or students to discuss religious beliefs requires separate analysis of the situation where teachers meet with teachers and where teachers meet with students. To the extent Stan meets only with other teachers to discuss religious beliefs and students are not involved, Stan should be allowed to engage in such activity if the meetings do not disrupt the school process. For example, Stan's meeting, if attended only by teachers after school, would probably not disrupt the school environment at all. School administrators and officials, as the arm of the state, will be concerned, however, to the extent such meetings are held on campus. They will contend that a violation of the establishment clause may be occurring. Students and parents would appear not to be interested parties in this situation unless the effect of the teachers meeting with teachers to discuss religious beliefs resulted in disruption to the school classes and administration.

If students are present at the meeting with Stan and other teachers, an establishment clause violation could occur. School officials, parents and students can all argue that violation of both the establishment clause and the free exercise rights of the parents and students occur, since many students are not capable of viewing the teacher as an individual acting apart from his or her school role. However, if the students are capable of viewing the teacher as an individual, meetings off campus probably should not be prohibited provided that no disruption of the school process results. The fact that the meeting would occur off campus makes it more likely that no interference with school functions will result.

Nevertheless, our hypothetical indicates that Stan's meeting occurred on the school campus and both teachers and students participated. The school's officials obviously fear that some governmental aid to religion has resulted. Stan will argue that room facilities are equally open to all teachers for meetings with their students and thus no governmental aid to religion is present. Parents may realize that there is subtle pressure placed upon students to please their teacher so that students may be motivated to attend meetings on account of such pressure. It becomes important then to consider what role Stan or another public school teacher would play at such meeting as well as the age and maturity of the students involved in order to determine whether an establishment clause violation occurs.

The distribution of religious literature by Stan presents the most serious question of an establishment clause violation. School officials, parents and students will all contend that Stan is indoctrinating the students with religious ideas and this clearly violates the establishment clause by using a state arm, his classroom, to disseminate religious material. Stan will try to argue that his distribution of the literature is merely informational; however, such activity seems clearly persuasive in nature. Moreover, Stan's distribution of the literature in the class where he is a teacher in a role of authority exerts further influence upon his students to accept the literature and the beliefs contained therein. Stan would be unsuccessful in arguing that his free exercise rights are abridged since distribution of literature is not required religious conduct that must be pursued at all times and in all places. Stan would be free to distribute literature during his free time away from school. Whether or not Stan's distribution of literature creates disruption in the school process need not be considered, since it is clear that an establishment clause violation exists.

E. Engage the students in a discussion as to which arguments they find most persuasive with respect to the various issues presented above.

F. Ask the students how they would feel if the factual situation involved a teacher they liked or a teacher they disliked. Be certain to mention that the Constitution is blind toward prohibiting the conduct of a person whom a group likes or dislikes. The Constitution should be applied without prejudice.

G. Ask the students what effects, if any, the following factors would or should have in resolving the issues presented by the problem:

(1) Prejudice.
(2) The relative needs of the public school teacher.
(3) Society's needs.

From a Constitutional standpoint, the decisions reached with respect to the issues presented by the hypothetical situation should not be affected if Stan were of a particular religious persuasion. Often in our history, however, prejudice against particular religious beliefs has determined whether or not other persons would remain tolerant and permit activities of other persons with different religious beliefs in their community.

The free exercise clause requires the issues to be resolved by determining what Stan or another public school teacher is required to do under the tenets of his religion. He has the right under the Constitution to exercise his religious beliefs freely.

Society's needs are to be protected by the establishment clause. The state must not aid religion.

As a result of an individual's needs and the needs of society the establishment clause and the free exercise clause must co-exist. The Supreme Court has applied the theory of accommodation to allow such co-existence.

H. Ask the students how <u>they</u> would resolve each of the issues presented by the hypothetical and why.

RESOLUTION OF THE DILEMMA

The Supreme Court has not expressly ruled on each of the issues presented above. Religious activity in public schools by teachers is limited by the establishment clause. However, there is no absolute bar to all religious expressions by public school teachers. Applying past Supreme Court and lower court decisions interpreting the various first amendment rights involved in the issues presented above, the following test might be applied to each of the activities in the hypothetical to determine whether or not they should be prohibited:

1. Does an <u>establishment</u> of religion occur because of (a) the scope of the teacher's activity (with students and/or on-campus), (b) governmental assistance to religion, (c) indoctrination of students and (d) the maturity and age of the students;

2. If any of the above factors are present, should there be accommodation of religion and

3. If there is no establishment of religion, is the school process nevertheless disrupted?

Applying the above test to each of the issues presented by Stan's activities in the hypothetical, the following decision might be reached:

1. Stan could wear the large wooden cross and read his Bible since there would occur only non-verbal, symbolic expression which would not indoctrinate his 16 or 17 year old students. No establishment clause violation would occur; therefore accommodation of Stan's free exercise rights need not be considered. No disruption of the school process would occur.

2. Stan's meeting with teachers and students on the campus would raise problems with all facets of the establishment of religion portion of the test outlined immediately above. Stan is (a) actively involved with his students; (b) using school facilities; (c) possibly indoctrinating the students with his own religious beliefs, and (d) dealing with 16 and 17 year old students. The meeting with teachers and students on campus after school would not be permitted if the school process were disrupted. The crucial determining factor would be disruption and on balance, the meeting probably would be prohibited.

3. Stan's distribution of the literature in his classes could be prohibited without determining whether or not it was disruptive. Distribution of literature in the class with students in a captive environment probably violates the establishment clause on its face.

REFERENCES

Statutes and court decisions pertaining to this area of the law are the following: First amendment of the United States Constittuion; Lemon v. Kurtzman, 403 U.S. 602 (1971); Zorach v. Clauson, 343 U.S. 306 (1952); School District of Abington v. Schempp, 374 U.S. 203 (1973) ; Meek v. Pittenger, 421 U.S. 349 (1975); Tinker v. Des Moines Indep. Comm. School Dist., 393 U.S. 503 (1969) (This case is the source of the material on substantial disruption to school processes concept, presented in the context of first amendment freedom of expression; in this case, students were permitted to wear black arm bands to protest against the Viet Nam War.

The following book is also quite useful and a significant contribution to this area of the law: Paul Kauper, Religion and the Constitution.

The case from which the additional hypothetical is derived is Moore v. Gaston Cty. Bd. of Educ., 357 F. Supp. 1037 (W.D.N.C. 1973).

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